Affd

Filed

Jan. 25th 1875

Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 479.

FRANK J. DONOVAN, ADMINISTRATOR OF DANIEL H. DONOVAN, DECEASED, JOSEPH O'NEIL, SAMUEL WILLI, AND JAMES S. DOUGHERTY, PLAINTIFFS IN ERROR,

VS.

THE UNITTD STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

FILED SEPTEMBER 1, 1874.

[illegible] 1874

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a UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1874, thereof, between the United States, defendant in error, and Frank J. Donovan, administrator of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, plaintiffs in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. East. Dist. Mo.,
By H. C. GEISBERG, *D. C.*

Allowed by—
JOHN F. DILLON, *Judge.*

b UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a duly-certified transcript of the record and proceedings in the within-mentioned case, together with all things concerning the same.

Witness my hand at office in the city of St. Louis, in said district, this twenty-fifth day of June, A. D. 1874.

AUSTIN DRAKE, *Clerk,*
By H. C. GEISBERG, *Deputy.*

(Indorsed:) United States circuit court, eastern district of Missouri. The United States, deft. in error, vs. F. J. Donovan, admin., &c., et al., plffs. in error. Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed , 187 .
, clerk.

c The United States of America to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, *for the* to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Frank J. Donovan, administrator of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John F. Dillon, judge of the circuit court of the United States for the eastern district of Missouri, this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

JOHN F. DILLON,
Judge United States Circuit Court, Eastern District of Missouri.

d I acknowledge service of the within citation.

WM. PATRICK, *U. S. Atty.*

(Indorsed:) United States circuit court, eastern district of Missouri. The United States, deft. in error, vs. Frank J. Donovan, admin., &c., et al., plffs. in error. Citation. Filed , 187 . clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Pleas before the honorable the circuit court of the United States in and for the eastern district of Missouri, at the March term, A. D. 1874, thereof.

Be it remembered that heretofore, to wit, on the 14th day of March, A. D. 1874, there was filed, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, a transcript in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Be it remembered that, on the twenty-ninth day of October, in the year of our Lord eighteen hundred and seventy-two, there was filed, in the clerk's office of the district court of the United States in and for the eastern district of Missouri, by Chester H. Krum, attorney for said United States in and for said district, an information, in case No. 2136 of The United States, plaintiff, vs. Frank J. Donovan, administrator of the estate of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willie, and James S. Dougherty, defendants, which information is in the words and figures following, to wit:

Information.

In the district court of the United States for the eastern district of Missouri, November term, 1872.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRANK J. DONOVAN, ADMINISTRATOR OF THE estate of Daniel H. Donovan, deceased, Joseph O'Niel, Samuel Willie, and James S. Dougherty, defendants.

2 EASTERN DISTRICT OF MISSOURI, *ss:*

The plaintiffs state that heretofore, to wit, on the 31st day of January, A. D. 1860, at the said eastern district of Missouri, by their obligation in writing herewith filed, sealed with their several seals, Daniel H. Donovan and the defendants Joseph O'Neil, Samuel Willie, and James S. Dougherty acknowledged themselves to be held and firmly bound unto the United States of America, the plaintiffs, in the full and just sum of twenty thousand dollars, money of the United States; to which payment well and truly to be made, they thereby bound themselves, jointly and severally, their joint and several heirs, executors, and administrators, and that the said obligation in writing was and is subject to the following condition to the effect, as follows: That whereas the President of the United States had, pursuant to law, appointed the said Daniel H. Donovan to the office of surveyor of the customs for the port of St. Louis, in the State of Missouri: Now, therefore, if the said Daniel H. Donovan had truly and faithfully executed and discharged, and should continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect, otherwise it should abide and remain in full force and virtue.

The plaintiffs state that, under and by virtue of the said appointment, the said Daniel H. Donovan was and continued in the service of the plaintiffs as surveyor of the customs for the port of St. Louis, in the State of Missouri, from said thirty-first day of January, A. D. 1860, until the 13th day of May, A. D. 1861, and assigning the a breach of the condition of said obligation in writing, the plaintiffs state that during said period of his service the said Daniel H. Donovan received for and on account of the plaintiffs, by virtue of his said office, large sums of
money, property of said plaintiffs, and that, although required by
3 law in the faithfull discharge of the duties of his office to account
for and pay over said sums unto plaintiff, he did not account for and pay over such sums, to wit, the sum of three thousand three hundred and fifty-six dollars and thirty-nine cents, or any part thereof, unto plaintiffs, although often thereunto requested and directed. The plaintiffs state that said Daniel H. Donovan is now deceased; that the defendant Frank J. Donovan, by the proper order and decree of the probate court of St. Louis County, in the State of Missouri, has been appointed and qualified as administrator of the estate of said Daniel H. Donovan, deceased; that said sum of three thousand three hundred and fifty-six dollars and thirty-nine cents now remains due and unpaid; that said indebtedness is shown by a transcript of the books and proceedings of the Treasury Department of plaintiffs, herewith filed, and that the defendants have refused and failed, and now refuse and fail, to pay said sum or any part thereof unto plaintiffs.

Wherefore plaintiffs state that said obligation in writing has become forfeit; that an action has accrued unto them to demand and have of said defendants the said sum of three thousand three hundred and fifty-six dollars and thirty-nine cents, with interest thereon at the rate of six per cent. per annum from the 13th day of May, A. D. 1861; and for this sum, with said interest and costs of suit, the plaintiffs ask judgment.

CHESTER H. KRUM,
U. S. Atty. of East. Dist. of Mo.

The said obligation so filed is in the words and figures following, to wit:

Bond.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *March* 21, 1872.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of the official bond of Daniel H. Donovan as surveyor of customs for the port of St. Louis, in the State
4 of Missouri, bearing date the thirty-first day of January, A. D. one thousand eight hundred and sixty, the original of which is on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.] GEORGE S. BOUTWELL,
Secretary of the Treasury.

Know all men by these presents that we, Daniel H. Donovan, Joseph O'Neil, Samuel Willie, and James S. Dougherty, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars, money of the United States; to which payment well and truly to be made we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this thirty-first day of January, in the year one thousand eight hundred and sixty. The condition of the foregoing obligation is such, that whereas the President of the United States has, pursuant to law, appointed the said Daniel H. Donovan to the office of surveyor of the customs for the port of St. Louis, in the State of Missouri: Now, therefore, if the said Daniel H. Donovan has truly and faithfully executed and discharged, and shall continue to truly and faithfully execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect; otherwise it shall remain in full force and virtue.

DANIEL H. DONOVAN. [SEAL.]
JOSEPH O'NEIL. [SEAL.]
SAMUEL WILLIE. [SEAL.]
JAMES S. DOUGHERY. [SEAL.]

Sealed and delivered in presence of—
THOMAS C. REYNOLDS, resident at St. Louis City.
F. AUG. WERNER, resident at St. Louis City.

The following instructions must be particularly observed and complied with, viz:

1st. The Christian names must be written in the body of the
5 bond in full, and so signed to the bond.

2d. A seal of wax or wafer to be attached to each signature.

3d. Each signature must be made in the presence of two persons, who must sign their names as witnesses.

4th. Each surety must make and sign an affidavit of the amount he is worth after paying his just debts.

5th. A district judge or attorney of the United States, or a clerk of the court of record, under the seal and designation of the court, county and State, must certify that the sureties are sufficient to pay the penalty of the bond.

6th. The affidavits of the sureties must be taken and signed before an officer authorized to administer oaths generally. The officer must certify that he administered the oaths. If the magistrate is not a judge of the United States court, his authority to administer oaths must be certified by the clerk of a court of record having official knowledge of that fact.

7th. A collector must be sworn in the collection-district in which he is appointed. The oath of office must be administered to a collector by a magistrate authorized to administer oaths generally. The authority to be certified as directed under the 6th item.

8th. The oath to a naval officer, surveyor, inspector, and to any other officer of the customs (except collector) must be administered by the collector in his district. (See act of March 2d, 1799, section 20.)

9. Bond to be dated.

I, Daniel H. Donovan, having been appointed to the office of surveyor of the customs for the port of St. Louis, in the State of Missouri, do solemnly, sincerely, and truly swear that I will diligently and faithfully execute the duties of the said office of the surveyor of the customs, and will use the best of my endeavors to prevent and detect frauds in relation to the duties imposed by the laws of the United States. I further swear that I will support the Constitution of the United States.

6 DANIEL H. DONOVAN,
Surveyor.

Sworn to and subscribed this 31st day of January, 1860, before me. Witness my hand and the seal of the district court of the United States of America in and for the eastern district of Missouri, at my office in the city of St. Louis, in said district, the day and year last aforesaid.

THOMAS C. REYNOLDS, [SEAL.]
Clerk of said District Court.

I, the undersigned, clerk of the U. S. district court in and for the eastern district of Mo., do hereby certify that Thomas C. Reynolds, who administered the above oath, was at the time of doing so duly authorized to administer the same, and that full faith and credit are due to his official attestations. In testimony whereof, I have hereto set my hand and affixed the seal of said district court, this 31st day of January, 1860.

[SEAL.] THOS. C. REYNOLDS,
Clerk of said District Court.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, the undersigned, clerk of the district court of said United States, in and for said district, hereby certify that the sureties in the foregoing bond, Joseph O'Neil, Samuel Willie, and James S. Dougherty, are sufficient to pay the penalty of the foregoing bond.

Witness my hand and the seal of said district court at my office in the city of St. Louis, in said district, this 31st day of January, A. D. 1860.

[SEAL.] THOS. C. REYNOLDS,
Clerk of said District Court.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

Before me, clerk of the United States district court in and for
7 the district aforesaid, personally appeared Joseph O'Neil, one
of the sureties in the official bond of Daniel H. Donovan as sur-

veyor of the customs of said United States for the port of St. Louis, Missouri, who, being duly sworn, deposes and says, that he is worth, over and above all just debts and liabilities, the sum of forty thousand dollars.

JOSEPH O'NEIL.

Sworn to and subscribed before me this 31st day of January, 1860. Witness my hand and the seal of said district court, at my office in the city of St. Louis, in said district, this 31st day of January, A. D. 1860.

[SEAL.] THOS. C. REYNOLDS,
Clerk of said District Court.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

Before me, clerk of the United States district court in and for the district aforesaid, personally appeared Samuel Willie, one of the sureties on the official bond of Daniel H. Donovan, as surveyor of the customs of said United States for the port of St. Louis, Missouri, who, being duly sworn, deposes & says that he is worth, over and above all just debts and liabilities, the sum of forty thousand dollars.

SAMUEL WILLI.

Sworn to and subscribed before me this 31st day of January, 1860. Witness my hand and the seal of said district court, at my office in the city of St. Louis, in said district, this 31st day of January, A. D. 1860.

[SEAL.] THOS. C. REYNOLDS,
Clerk of said District Court.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

Before me, clerk of the United States district court in and for the
district aforesaid, personally appeared James S. Dougherty, one of the
sureties on the official bond of Daniel H. Donovan, as surveyor of the
customs of said United States for the port of St. Louis, Missouri, who,
being duly sworn, deposes and says that he is worth, over and
8 above all just debts and liabilities, the sum of forty thousand
dollars.

JAMES S. DOUGHERTY.

Sworn to and subscribed before me this 31st day of January, 1860. Witness my hand and the seal of said district court, at my office in the city of St. Louis, in said district, this 31st day of January, A. D. 1860.

[SEAL.] THOS. C. REYNOLDS,
Clerk of said District Court.

The transcript of the books and proceedings of the Treasury Department of the United States, filed as aforesaid, is in the words and figures following, to wit:

Transcript of acc'ts.

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *March 23d*, 1872.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, John A. Graham, acting Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the First Auditor of the Treasury, numbered

32800, 32845, and 33590, as admitted and certified by the Commissioner of Customs upon the accounts of Daniel H. Donovan, late surveyor of the customs for the port of St. Louis, Missouri, under his official bond, dated January 31, 1860, and of statements and statements of differences thereon, are a transcript from the books and proceedings of the Treasury, and that the copies of the accounts-current of said surveyor hereto attached are true copies of the originals on file in this office.

J. A. GRAHAM,
Acting Register.

Be it remembered that John A. Graham, esq., who certified the annexed transcript, is now, and was at the time of doing so, acting Register of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the United
States, have hereunto subscribed my name and caused to be
9 affixed the seal of this Department, at the city of Washington,
this twenty-third day of March, in the year of our Lord 1872.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

No. 32800.

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE.

I have examined and adjusted the accounts of Daniel H. Donovan, surveyor of the customs for the port of St. Louis, Mo., under his official bond, dated 31st January, 1860, commencing 1st April, 1861, and ending 30th April, 1861, and find that he is chargeable with—

To duties on merchandise	8,520 47
To marine hospital money collected	463 40
Storage received	44 67
Dollars	9,028 54

I also find that he is entitled to credit, viz:

By amount of warrant in favor of the Treasurer, No. 20, (dep'd,) dated 29 May, 1861	5,625 21
And that the balance due the United States on the 1st May, 1861, amounted to	3,403 23
Dollars	9,028 54

as appears from the statement and accounts herewith transmitted for the decision of the Commissioner of Customs thereon.

T. L. SMITH, *Auditor.*

To NATHAN SARGENT, Esq.,
Commissioner of Customs.

OFFICE OF COMMISSIONER OF CUSTOMS.

Admitted and certified, June 14, 1861.

N. SARGENT,
Commissioner.

To L. E. CHITTENDEN, Esq.,
Register.

10 *Daniel H. Donovan, surveyor of the customs for the port of St. Louis, Mo., in account with the United States, under official bond dated* 31*st January*, 1860, *commencing* 1*st and ending* 30 *April*, 1861.

DR.

To duties on merchandise	8,520 47
“ marine hospital money collected	463 40
“ storage, etc., received	44 67
Dollars	9,028 54

The balance due the U. S., per his a/c, agrees with that of the above statement.

Aggregate of duties collected on merchandise imported into the port of St. Louis, Mo., during the month of April, 1861.

In various vessels, (act 3d March, 1857:)

VALUE OF MERCHANDISE.

$3,132 at 8 pr. ct.		250 56	
101 “ 12 “ “		12 12	
9,083 “ 15 “ “		1,362 45	
10 “ 19 “ “		1 90	
6,826 “ 24 “ “		1,638 24	
4,132 “ 30 “ “		1,239 60	
			4,504 87
(Act 2 March, 1861:)			
535,416 lbs. sugar at $\frac{3}{4}$ c			4,015 60
			8,520 47

CR.

By amount of warrant in favor of the Treasurer, No. 20, (dep'd,) dated 29 May, 1861	5,625 31
“ balance due the United States	3,403 23
Dollars	9,028 54

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *June* 8, 1861.

Examined and stated by

11 J. T. RAYMOND.

OFFICE OF COMM'R OF CUSTOMS, *June* 13, 1861.
J. BARTRAM NORTH.

No. 32845.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *June* 19, 1861.

I have examined and adjusted the account of Daniel H. Donovan, surveyor of the customs for the port of St. Louis, Mo., under his official bond dated 31st January, 1860—commencing 1st May, 1861, and ending 13th May, 1861—and find that he is chargeable, viz:

To bal. of his account ending 30 April, 1861, per report No. 3280	3,403 23
" duties on merchandise	2,685 91
" marine-hospital money collected	186 50
" storage received	31 20
Dollars	6,306 84

I also find that he is entitled to credits, viz:

By amount of warrant in favor of the Treasurer, No. 33, (dep'd,) dated 13 June, 1861	2,527 84
And that the balance due the United States on the 14th day of May, 1861, amounted to	3,779
Dollars	6,306 84

As appears from the statement and accounts herewith transmitted for the decision of the Commissioner of Customs thereon.

T. L. SMITH,
Auditor.

To NATHAN SARGEANT, Esq.,
Commissioner of Customs.

OFFICE OF COMMISSIONER OF CUSTOMS.

Admitted and certified July 10, 1861.

N. SARGENT,
Commissioner.

To L. E. CHITTENDEN, Esq., *Register.*

12 *Daniel H. Donovan, surveyor of the customs for the port of St. Louis, Mo., in account with the United States, under official bond dated* 31*st January,* 1860, *commencing* 1*st and ending* 13*th May,* 1861.

DR.

To balance of his account ending 30 April, 1861, per report No. 32800	3,403 23
" duties on merchandise	2,685 91
" marine-hospital money collected	186 50
" storage received	31 20
Dollars	6,306 84

The bal. due the U. S. per his a/c is	380 81
Add " " " " " " ending 30 April last, but not brought forward by him	3,403 23
	3,784 04
From which deduct amount covered by warrant, more than charged by surveyor	5 04
	3,779 00

Aggregate of duties collected on merchandise imported into the port of St. Louis, Mo., during the month of 1st *&* 13th *May*, 1861.

In various vessels, (act 3d March, 1857 :)

VALUE OF MERCHANDISE.

$653 at 15 pr. ct.	97 95	
3,221 " 24 "	773 04	
773 " 30 "	231 90	
		1,102 29
(Act 2d March, 1861 :)		
198,590 lbs. sugar, at $\frac{3}{4}$ c	1,489 42	
Value of merchandise, $246	24 60	
Sugars, 115 lbs., at 60 cts	69 00	
		1,583 02
		2,685 91

CR.

By amount of warrant in favor of the Treasurer, No. 33, (dep'd,) dated 13 June, 1861	2,527 84
Balance due the United States	3,779 00
13 Dollars	6,306 84

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *June* 19, 1861.

Examined and stated by—
J. T. RAYMOND.

OFFICE OF COMMISSIONER OF CUSTOMS, *June* 20, 1861.
J. BARTRAM NORTH.

No. 33950.]
TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *January* 15, 1862.

I have examined and adjusted the account of Daniel H. Donovan, late surveyor of the customs for the port of St. Louis, Mo., under his official bond dated 31st January, 1860, and find that he is chargeable, viz:

To balance of his account, ending 13th May, 1861, per report No. 32845	3,779 00
Dollars	3,779 00

I also find that he is entitled to credit, viz:

By amount of warrant in favor of the Treasurer, No. 11, dated 6 August, 1862	422 61
And that the balance due the United States amounts to	3,356 39
Dollars	3,779 00

As appears from the statements and accounts herewith transmitted for the decision of the Commissioner of Customs thereon.

T. L. SMITH, *Auditor.*

To N. SARGENT, Esq.,
Commissioner of (Amos Ledger) Customs.

OFFICE OF COMMISSIONER OF CUSTOMS.

Admitted and certified Jan'y 17th, 1862.

N. SARGENT, *Commissioner.*

To L. E. CHITTENDEN, *Register.*

Daniel H. Donovan, late surveyor of the customs for the port of St. Louis, Mo., in account with the United States under official bond dated 31st January, 1860, balance account.

DR.

To balance of his account ending 13 May, 1861, per report No. 32845		3,779 00
14 Dollars		3,779 00
The balance due the United States per his a/c ending 13th May, 1861, the end of his official term, was		380 81
Add balance due U. S., per his a/c ending 30 April last, but not brought forward by him		3,403 23
		3,784 04
From which amount deduct amount covered by w't, more than charged by surveyor	5 04	
Deduct w't No. 11, dated 6 Aug., 1861	422 61	
		427 65
		3,356 39

CR.

By amount of warrant in favor of the Treasurer, No. 11, dated 6th August, 1861	422 61
Balance due the United States	3,356 39
Dollars	3,779 00

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *January* 15, 1862.

Examined and stated by—

J. T. RAYMOND.

OFFICE OF COMMISSIONER OF CUSTOMS, *January* 16, 1862.

J. BARTRAM NORTH.

The United States in account-current with Dan'l H. Donovan, surveyor, etc., acting as collector of customs at the port of St. Louis, district of New Orleans, for the month of April, 1861, prepared agre'able to instructions of the Secretary of the Treasury of June 15th, 1853.

For amount moneys deposited to the credit of the Treasurer of the United States, as per statement No. 1	5,625 31
Balance on account-current for contingent expenses, etc	3,403 25
	9,028 54

By amount duties on imports, as per abstract No. 2........	8,520 47
" " hospital money " 3.........	463 40
" " storage received; statement " 4.........	44 67
15	9,028 54

District of New Orleans, port of St. Louis, surveyor's office, April 30, 1861.

DAN'L H. DONOVAN, *Collector.*

The United States in account-current with Dan'l H. Donovan, surveyor, etc., acting as collector of customs at the port of St. Louis, district of New Orleans, for the month of May, the 13*th*, 1861, *prepared agreeable to instructions of the Secretary of the Treasury of June* 15*th*, 1853.

For amount moneys deposited to the credit of the Treasurer of the United States, as per statement No. 1..............	2,522 80
Balance, (retained for salaries)	380 81
	2,903 61

By amount duties on imports, as per abstract No. 2.........	2,685 91
" " hospital money " " " 3.........	186 50
" " storage received " statement " 4.........	31 20
	2,903 61

District of New Orleans, port of St. Louis, surveyor's office, May 13th, 1861.

DAN'L H. DONOVAN, *Collector.*

And thereupon, on the thirty-first day of October, A. D. 1872, there was issued, out of the clerk's office of said district court, a summons in this cause, which said summons in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court in said United States in and for said district.

The President of the United States of America to the marshal of said United States in and for said district, greeting:

16 You are hereby commanded to summon Frank J. Donovan, administrator of the estate of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James L. Dougherty, defendants, citizens of the State of Missouri, that they be and appear before the honorable district court of the United States for the eastern district of Missouri, at the city of St. Louis, in and for said district, at the next regular stated term thereof, to be begun and holden on the third Monday, the 18th day, of November, A. D. eighteen hundred and seventy-two,

then and there to answer unto the United States of America, plaintiff, on petition filed in said court on the 29th day of October, A. D. 1872, in a plea of debt on bond and praying for judgment in favor of said plaintiff in the sum of three thousand three hundred and fifty-six dollars and thirty-nine cents, with interest and costs. Hereof fail not, and have you then and there this writ.

Witness the honorable Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, this 31st day of October, A. D. eighteen hundred and seventy-two. Issued at office in the city of St. Louis under the seal of said district court the day and year last aforesaid.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And on the 18th day of November, A. D. 1872, the marshal of the United States in and for said district returned into court the summons issued in this cause, together with his return of his proceedings thereon, and thereupon said summons and said return were filed.

The said return is in the words and figures following, to wit:

Marshal's return on summons.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of the summons, together with a copy of the petition, to the within-named Frank J. Donovan, adm'r of Daniel H. Donovan, deceased, and delivering a copy of the summons, together with a copy of the petition, to the within-named
17 Joseph O'Neil, Sam. Willi, and James S. Dougherty, at St. Louis, within the eastern district of Mo., Nov. 2d, 1872.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By WM. H. BIERSTADT,
Deputy.

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on Monday, the 17th day of February, A. D. 1873, the following further proceedings took place in this cause, on Tuesday, the 4th day of March, in said year, to wit:

Answer filed.

IN CASE NO. 2136 OF THE UNITED STATES, plaintiff,
agst.
FRANK J. DONOVAN, ADMINISTRATOR, ETC., ET al., defendants.
} No. 2136. Debt on bond.

This day come the parties, by their respective attorneys, and by consent of said attorneys, the defendants herein, by Messrs. Sharp & Broadhead, their attorneys, file their answer to the petition heretofore filed by plaintiff in this cause.

The said answer is in the words and figures following, to wit:

Answer.

In the district court for the eastern district of Missouri.

THE UNITED STATES OF AMERICA, PLFF.,
vs.
FRANK J. DONOVAN, ADM. THE ESTATE OF Daniel H. Donovan, dec'd, Joseph O'Neil, Samuel Willi, and James S. Dougherty, defendants.

Defendants, for answer to the petition of plaintiff, admit the execution of the bond set forth in said petition, and also that the said Daniel H. Donovan, deceased, was and continued in the service of plaintiffs as surveyor of customs for the port of St. Louis, in the State of Missouri, from said 31st day of January, A. D. 1860, until the 13th day of May, A. D. 1861. But defendants say it is not true that said Daniel H. Donovan received for and on account of plaintiffs the sum of three thousand three hundred and fifty-six dollars and $\frac{37}{100}$ as averred, or that
he was required in the faithful discharge of his duties of his office
18 to account for and pay over said sum of money, or any part
thereof. Defendants admit the death of Daniel H. Donovan, and that Frank J. Donovan was appointed and qualified as administrator of his estate.

And for further answer defendants say that, on the said 30th day of May, A. D. 1861, the said sum of three thousand and three hundred and fifty-six dollars and $\frac{37}{100}$ was due by plaintiffs to the said Daniel H. Donovan for and on account of salary and fees, commissions, emoluments from all sources, storage and fees for storage, coming to him as surveyor as aforesaid; that Daniel H. Donovan was and is entitled to a credit on the books of the Treasury Department at Washington for said sum of money, and that said claim for credit has before the institution of this suit by the said Daniel H. Donovan in his life-time, and by his administrator aforesaid since his death, been presented to the accounting officers of the Treasury Department at Washington for their examination, and that the same has been disallowed.

Defendants further say that by virtue of the provisions of the following acts of Congress, to wit, the act of March 2d, 1799, 1 Statutes at Large, p. 708; act of May 7th, 1822, Stats. at Large, vol. 3, p. 695, as thereafter modified; act of March 2d, 1821, Stat. at Large, vol. 4, p. 482; act of March 3, 1841, vol. 5, Statutes, p. 432; act of March 3d, 1857, vol. 11, p. 8, p. 229, Statutes at Large, and by the act of June 8th, 1872, session acts of 1871–72, p. 336, the said Daniel H. Donovan was entitled to said sum of money on account of salary, fees, commissions, emoluments from all sources, storage and fees for storage.

Wherefore defendants ask to be hence dismissed with their costs.

SHARP AND BROADHEAD,
Attys. for Defts.

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on Monday, the 5th day of May,
A. D. 1873, the following further proceedings took place in this
19 cause on Wednesday, the 21st day of May, in said year, to wit:

Waiver of jury.

IN CASE NO. 2136 OF THE UNITED STATES, plaintiff, *agst.* FRANK J. DONOVAN, ADMR., ETC., DEFENDANTS.	No. 2136. Debt on bond.

This day come the parties by their attorneys and file an agreement in writing waiving a jury in this case, and consenting that said case may be tried by the court without the intervention of a jury.

The said waiver of jury so filed is in the words and figures following, to wit:

United States district court, eastern district of Missouri.

UNITED STATES *vs.* FRANK J. DONOVAN, ADMR., & AL.,	Case No. 2136.

We consent to waive a jury in the above-entitled cause.

SHARP AND BROADHEAD,
Attys. for Defts.
WM. PATRICK,
U. S. Atty.

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on Monday, the 3d day of November, A. D. 1873, the following further proceedings took place in this cause on Tuesday, the 9th day of December, in said year, to wit:

Trial of cause by the court.

IN CASE NO. 2136 OF THE UNITED STATES, plaintiff, *agst.* FRANK J. DONOVAN, ADMINISTRATOR, ETC., ET al., defendants.	No. 2136. Debt on bond.

This day come the United States by district attorney, and also the defendants herein, by James O. Broadhead, esquire, their attorney, and this cause being regularly called for trial, and both parties being ready, and the said parties, by their said attorneys, having heretofore filed a stipulation in writing waiving a jury in this case and consenting and agreeing that this cause may be tried by the court without the intervention of a jury, the said cause was thereupon heard and argued by
counsel and submitted to the court upon the pleadings and proofs
20 therein, without the intervention of a *of a* jury, and the court not
being fully advised in the premises, took further time to consider
of its verdict herein.

And at last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Friday, the nineteenth day of December, A. D. 1873, to wit:

Finding of the court.

IN CASE NO. 2136 OF THE UNITED STATES, plaintiff, *agst.* FRANK J. DONOVAN, ADMR. OF DANIEL H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, defts.	No. 2136. Debt on bond.

This day come again the parties, by their respective attorneys, and this cause having been heretofore tried by and submitted to the court without the intervention of a jury, a jury having been waived in writing, and the court having fully considered the pleadings and proofs therein, and being fully advised in the premises, now finds the issues joined herein for the plaintiff, and finds that the said plaintiff is entitled to a judgment for the amount of the bond sued upon in this cause, to be discharged by the payment of such damages as the plaintiff has sustained by reason of the non-compliance with the conditions of said bond, which damages are found by the court to be the sum of twelve hundred and eighty-seven dollars and three cents, and for which sum and costs judgment is ordered to be entered herein.

Judgment, etc.

It is, therefore, now considered by the court that the plaintiff, The United States of America, recover against the defendants, Frank J. Donovan, administrator of the estate of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, the sum of ($20,000) twenty thousand dollars, the amount of the bond sued on and mentioned in the declaration in this case, said amount to be discharged by the payment of the sum of ($1,287.03) twelve hundred and
21 eighty-seven dollars and three cents, the damages so as aforesaid by the court found to be due and assessed herein, and also the costs of this suit to be taxed, and that execution for said sum and costs be issued in said cause.

And at said last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceeding took place in this cause on Saturday, the twenty-fourth day of January, A. D. 1874, to wit:

Bill of exceptions filed.

IN CASE NO. 2136, OF THE UNITED STATES, plaintiff, *ag'st* FRANK J. DONOVAN, ADM'R, ETC., ET AL., DEFENDANTS.	No. 2136. Debt on bond.

This day come the defendants in this cause by James O. Broadhead, esquire, their attorney, and present to the court their bill of exceptions herein, which is signed and sealed and ordered to be made a part of the record in this cause.

Waiver of bond filed.

And the said defendants having sued out a writ of error from the circuit court of the United States for the eastern district of Missouri, the said plaintiff by district attorney, in writing, waives the necessity of giving bond on the part of the said defendants herein.

The said bill of exceptions so filed is in the words and figures following, to wit:

Bill of exceptions.

In the district court of the U. States, eastern district of Missouri.

UNITED STATES
vs.
FRANK J. DONOVAN, ADM'R OF DANIEL H. Donovan, et als.

Be it remembered that the above-entitled cause coming on to be heard, the following stipulation or agreed statement of facts was offered in evidence, as follows:

Stipulation.

U. S. district court, eastern dist. of Missouri.

UNITED STATES, PLFF.,
vs.
DONOVAN, ADM'R, DEFT.

22 It is admitted by the parties to the above-entitled cause that defendant-intestate was surveyor of the port of St. Louis doing duty as collector, and he as such surveyor performed such duties as collector as became necessary to be performed at that port between the 31st day of January, 1860, and the 13th day of May, 1861. It is admitted that defendant-intestate retained for his compensation as such surveyor at the rate of $6,000 per year, two thousand of which was earned from rent and storage, and four thousand of which amount was earned from all other fees and emoluments. If the maximum compensation of his office was $6,000, then the balance found against him by the Treasury Department and for is not due.

If the maximum compensation of said office be found by the court to be less than $6,000, then the balance due the Government, if any, is to be adjusted on that basis. It is further admitted that all surveyors doing duty as collectors at the port of St. Louis have since the creation of said been charging and receiving 3 per cent. upon duties collected, and it is also admitted that since the act of March 3d, 1857, said officers have claimed the sum of $6,000.00 as the maximum of their compensation from all sources under the law.

WM. PATRICK,
U. S. Attorney.
JAMES O. BROADHEAD,
Atty. for Deft.

ST. LOUIS, *Dec. 9th*, 1873.

Also the Treasury transcripts filed with the petition, as follows:
(Copied on page 8 to 15 of this record.)

This was all the evidence.

Thereupon the court, upon the statement of facts set forth in the stipulation above referred to and set out, found the law to be for the plaintiff and assessed the damages against defendant at the sum of dollars , and to the opinion and judgment of the court in finding for plaintiff on said agreed statement of facts the defendants at the time excepted, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record, which is done.

23 SAMUEL TREAT, *Judge.* [SEAL.]

Correct: WM. PATRICK, *U. S. Atty.*

The said waiver of bond is in the words and figures following, to wit

Waiver of bond.

United States district court, eastern district of Missouri.

UNITED STATES, PLFF.,
vs.
FRANK J. DONOVAN, ADM'R, & ALS., DEFT.

On writ of error to the United States circuit court for eastern district of Missouri.

Plaintiff waives the necessity of giving bond on part of defendants.

WM. PATRICK, *U. S. Atty.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the record and proceedings in case No. 2136, A. D. 1872, of The United States, plaintiff, against Frank J. Donovan, administrator of the estate of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this seventh day of March, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And at the regular stated term of the circuit court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in and for said district, on the 3d Monday, the 16th
24 day of March, A. D. 1874, the following proceedings were had in this cause on Tuesday the 31st day of March, A. D. 1874, to wit:

Finding and judgment.

THE UNITED STATES, DEFENDANT IN ERROR,
vs.
FRANK J. DONOVAN, ADM'R, ET AL., PLAINTIFFS in error.
Writ of error to the district court.

This cause coming on to be heard at this term, the same was argued by counsel for the respective parties, and submitted to the court upon the transcript of the record and proceedings as certified from the district court of the United States in and for the eastern district of Missouri, and also upon the case as made out and presented to the court; and the court being fully advised in the premises, it is now finally ordered, adjudged, and decreed that the judgment of said district court be, and the same is hereby, affirmed. It is further ordered, adjudged, and decreed that the plaintiffs in error, Frank J. Donovan, administrator of the estate of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and Jas. S. Dougherty, pay the costs occasioned by the suing out of the writ of error in this case, and that execution or fee-bill be issued for such costs, and that a certified copy of this judgment be transmitted to said district court for its action thereon.

MEMORANDUM.—His honor Judge Treat did not take any part in the disposition of this cause.

And afterwards, at said March term, A. D. 1874, of said circuit court, the following further proceedings were had in this cause on Friday, the 10th day of April, A. D. 1874, to wit:

THE UNITED STATES, DEFENDANT IN ERROR,
vs.
FRANK J. DONOVAN, ADM'R, ETC., ET AL., PLAINTIFF in error.
} Writ of error to the district court.

25 This day come the plaintiffs in error and present their bill of exceptions in this case, which is signed by the honorable John F. Dillon, circuit judge, who presided at the hearing, and said plaintiffs in error also present to the court a writ of error to reverse the judgment herein, and a citation directed to the defendants in error citing and admonishing it to be and appear at the next term of the Supreme Court of the United States, and thereupon said writ of error is allowed, and the citation signed by said circuit judge.

The bill of exceptions filed as aforesaid is in the words & figures following, to wit:

Bill of exceptions.

U. S. circuit court, eastern district of Missouri.

DONOVAN, ADM'R OF DONOVAN, PLFF. IN ERROR,
vs.
UNITED STATES OF AMERICA, DEFT. IN ERROR.

Be it remembered that the above-entitled cause coming on to heard on writ of error to the district court of the United States for the eastern district of Missouri, and the assignment of error therein, the matters and things appearing on the record and proceedings in the said district court having been submitted to this court, and upon argument of counsel the court found for the defendant in error, to which finding the plaintiff in error at the time excepted, and prays that this his bill of exceptions be signed, sealed, and made a part of the record, which is done.

JOHN F. DILLON.

And afterwards, in vacation of said circuit court, the following further proceedings were had in this cause on Tuesday, the 28th day of April, A. D. 1874, to wit:

26 THE UNITED STATES, DEFT. IN ERROR, *vs.* FRANK J. DONOVAN, ADM'R, ETC., ET AL., PLFFS. in error. } Writ of error to U. S. district court, eastern district of Missouri.

This day come the plaintiffs in error by their attorney, and file their bond of appeal herein, which is approved by the honorable Samuel Treat, one of the judges of this court, and ordered to be filed and made a part of the record herein, and said plaintiffs in error also file a memorandum in writing, signed by the district attorney, waiving a bond in this case on the writ of error heretofore sued out.

The bond of appeal filed as aforesaid is in the words and figures following, to wit:

Bond of appeal.

Know all men by these presents that we, Reuben H. Stephenson, of Cincinnati, Hamilton County, and State of Ohio, and Frank J. Donovan, administrator, etc., of St. Louis, Mo., as principal, and Samuel M. Breckinridge, of the city and county of St. Louis, and State of Missouri, are held and firmly bound unto the United States of America, in the full and just sum of five hundred dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately at the March term, A. D. 1874, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the United States of America, defendant in error, and Frank J. Donovan, administrator of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, 27 plaintiffs in error, judgment was rendered against the said plaintiffs in error, and the said plaintiffs in error having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant in error, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such that if the said plaintiffs in error shall prosecute said writ to effect, and answer all damages and costs if the' fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

REUBEN H. STEPHENSON. [SEAL.]
FRANK J. DONOVAN, [SEAL.]
Adm'r of Dan'l H. Donovan.
S. M. BRECKINRIDGE. [SEAL.]

Sealed and delivered in presence of—
F. C. MILLER.
C. A. SANTINGER.

Approved by—
SAMUEL TREAT, *Judge.*

The memorandum filed as aforesaid is in the words and figures following, to wit:

Memorandum.

UNITED STATES OF AMERICA
vs.
FRANK J. DONOVAN, ADM'R, & AL.

Circuit court of the U. S. for the eastern district of Mo.

Now at this day appears W. Patrick, U. S. district atto., and waives the giving of any bond in this case on the writ of error sued out herein to the Supreme Court of the U. S.

WM. PATRICK, *U. S. Attorney.*

John F. Dillon, circuit judge, delivered the following opinion:

U. S. circuit court, eastern district of Missouri.

28 *Opinion of Judge Dillon.*

UNITED STATES, DEFENDANT IN ERROR,
vs.
FRANK J. DONOVAN, ADM'R, & AL., PLAINTIFFS
in error.

Writ of error to the district court for the eastern district of Missouri.

The error complained of is that the district court should have allowed compensation to the administrator's intestate (who was surveyor of the port of St. Louis, under the act of Congress of March 2d, 1831, on whom was devolved the duties of collector) of $6,000 per year, instead of $5,000.

Wm. Patrick, district attorney, for the United States.

Sharp and Broadhead, Mr. Noyes & Mr. Wright, contra.

DILLON, *Circuit Judge:*

Daniel H. Donovan was surveyor of the port of St. Louis, charged with the duties of collector of customs, and the administrator of his estate contends that in the accounting with the United States he should be allowed, under the act of June 8th, 1872, compensation upon the basis of $6,000 per year instead of $5,000, as determined by the district court.

The provision of this act is that the compensation of such an officer shall be the same as that given to collectors by the fifth section of the act of March 3d, 1841, not to exceed, however, the maximum amount therein allowed. In 1859 the Supreme Court of the United States construed the above-mentioned act of 1841, in connection with the previous acts in pari materia, and decided that as respects compensation there were two classes of collectors:

1. Collectors of the seven ports enumerated in the 9th section of the act of May 7th, 1822, whose total compensation from all sources might
equal, but could not exceed, $6,000 in a year; and 2d, all other
29 collectors, i. e., collectors of the non-enumerated ports, whose
aggregate compensation could not exceed the sum of $5,000 in
any one year. (United States vs. Walker, 22 How., 299, 1859.) I am
unable to discover in the act of 1872 satisfactory evidence that was

thereby intended to abrogate, in favor of surveyors performing the duties of collectors, this established distinction between what is termed the enumerated and unenumerated ports.

The act of 1841, as authoritatively construed, limited the aggregate compensation of a collector of one of the enumerated ports at $6,000, and of a collector of any other port at $5,000; but, while it did provide for the compensation of surveyor, it did not provide a specific compensation for a surveyor who, under the act of 1831, performed the duties of a collector of customs.

This was sought to be remedied by the act of March 3d, 1857, but as its phraseology was not clear, and as complaints were made, that it was illiberally restricted by the accounting-officers of the Treasury Department to the surveyors of the principal ports, under the 9th section of the act of 1822, (Cong. Globe, 2d sess. 43 Cong., part 4, p. 3409,) the act of 1872, upon which the plaintiffs in error rely, was passed.

This last-named act places "all surveyors of customs ports performing the duties of collectors" upon the footing, as respects compensation, of collectors under the act of March 3d, 1841, for like services.

St. Louis being a non-enumerated port, the maximum allowance to a collector can, in no event, exceed $5,000, and this sum is, in my judgment, the limit of compensation to which the surveyor of the port of St. Louis is entitled. I concur in the opinion of the district
30 judge, and the judgment below is accordingly affirmed.

Decision of Judge Treat, U. S. dist. court, E. D. Mo.

UNITED STATES
vs.
FRANK J. DONOVAN, ADMINISTRATOR.

U. S. dist. court, eastern district Missouri.

This is a suit on an official bond against the administrator of the principal and his sureties.

Daniel H. Donovan was surveyor of the port of St. Louis, charged, under the act of 1831, with the duties of collector. By the act of March 3d, 1841, under the construction thereof by the United States Supreme Court, (22 Howard's, 303, and 5th Wallace's, 647,) said Daniel H. Donovan, if collector, would have been entitled to receive, as compensation, $3,000, plus $2,000 for rent and storage, if earned, making a maximum for the office of $5,000.

The act of 1857, section 8, provides that the provision of the 5th section of the act of 1841, which established and limited the compensation of collectors of customs, shall be construed to apply to surveyors performing or having performed the duties of collectors of the customs, who shall be entitled to the same compensation as is allowed to collectors for like services in the settlement of their accounts.

In the light of previous adjudications upon the act of 1841, the act of 1857 must be construed to give to surveyors performing the duties of collectors the same compensation as was allowed to collectors of their respective classes; that is, if the surveyors performing collector's duties were in the enumerated ports, $6,000; if in the non-enumerated ports, $5,000.

The words "allowed" and "established and limited" must be interpreted in connection with the other statutes in pari materia. The act of 1841 "allowed" those officers to retain $2,000 for rent and stor-

31 age, if earned, and "limited" the allowance on that account to that sum. By so doing the act necessarily, in connection with the act of 1822, "established and limited" and also "allowed" the compensation, if earned, at $6,000 as a maximum for collectors in enumerated ports, and of $5,000 for non-enumerated ports.

The act of 1857 put the compensation of surveyors performing the duties of collectors on the same basis.

In that condition of the law the act of 1872 was passed. It is as follows:

"That the provisions of the fifth section of the act of 1841, which established and limited the compensation of collectors of customs, shall be amended, and shall be construed to apply to all surveyors of custom ports performing or having performed the duties of collectors of customs, who shall be entitled to receive the same compensation as is allowed to collectors by said act of 1841, for like services, in the settlement of their accounts with the Treasury; provided, that the fees, commissions, and emoluments prescribed by law and collected by them shall amount to such maximum allowance."

As the act of 1841 did not repeal the act of 1822, and consequently collectors of enumerated ports were limited to $6,000, and non-enumerated ports to $5,000, and as the act of 1857 put surveyors performing the duties of collectors upon the same footing for like services, the classification previously established was thereby continued. Such surveyors were put on the same footing as collectors would have been in the respective ports enumerated and non-enumerated, and consequently entitled to the compensation thus established and limited and allowed.

The act of 1872 amends and construes the act 1841, but makes
32 no mention of the act of 1857. There must have been some reason, from construction or otherwise of the previous acts, which induced the adoption of the act of 1872. The latter act says that all surveyors of the class named shall be included within its provisions, and uses the same terms substantially in all other respects except that a proviso is annexed.

In the absence of that proviso the only change bearing on this question is the use of the term "all" inserted before the word surveyors. What had been the construction of the Treasury Department of the act of 1857 is not known, although intimated in the argument that it had confined the compensation provided thereby to surveyors of enumerated ports. If that was the mischief to be remedied, the insertion of the word "all" is readily explicable, although the general terms used in the act of 1857 would seem sufficiently comprehensive.

The act of 1872, however, uses the same general language as to like service, necessarily implying the established distinctions between enumerated and non-enumerated ports. The proviso, though using the general phrase if the fees, etc., shall "amount to such maximum allowance," cannot be considered as abolishing the distinctive sums named under the different classifications. The conclusion, therefore, is that the surveyor at St. Louis was entitled to $5,000 only if earned.

Under the agreed facts, he was indebted to the United States at the close of his term of office May 13, 1861, $1,287.03.

33 UNITED STATES OF AMERICA,
Circuit Court for the Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of

United States, defendants in error, against Frank J. Donovan, adm'tor, etc., et al., plaintiffs in error, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said district, this twenty-fifth day of June, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] AUSTIN DRAKE, *Clerk*,
By H. C. GEISBERG, *Deputy*.

(Indorsed:) United States circuit court, eastern district of Missouri. United States, deft. in error, against F. J. Donovan, adm'r, etc., et al., plffs. in error. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 479. Frank J. Donovan, administrator of Daniel H. Donovan, deceased, Joseph O'Neil, Samuel Willi, and James S. Dougherty, plaintiffs in error, vs. The United States. E. Missouri C. C. U. S. Filed 1st September, 1874.

Jan. 25. 1875. Filed

Robert Clarke & Co., Prs., 65 West Fourth St., Cin., O. [*November*, 1874.

Supreme Court of the United States.

Donovan's Administrator et al.,
Appellants,
vs.
The United States,
Appellee.

Appeal from the Circuit Court of the United States, Eastern District of Missouri.

D. THEW WRIGHT,
NOYES & LLOYD,
Attorneys.

Robert Clarke & Co., Prs., 65 West Fourth St., Cin., O. [*November*, 1874.

Supreme Court of the United States.

Donovan's Administrator et al.,
Appellants,
vs.
The United States,
Appellee.

Appeal from the Circuit Court of the United States, Eastern District of Missouri.

PLEADINGS AND AGREED STATEMENT.

This case comes to the Supreme Court of the United States on appeal from the Circuit Court of the United States, Eastern District of Missouri.

Suit was brought in said District Court by the United States against Donovan's administrator, and his bondsmen, upon the official bond of said Donovan, to recover the sum of three thousand three hundred and fifty-six dollars and thirty-nine cents ($3,356.39), which sum, it is claimed, had been illegally retained by said Donovan, in his lifetime, as compensation for his services while acting as surveyor of the port of St. Louis, performing the duties of collector.

The information was as follows:

INFORMATION.

THE UNITED STATES OF AMERICA, *Plaintiff*,
vs.
FRANK J. DONOVAN, ADMINISTRATOR OF THE ESTATE OF DANIEL H. DONOVAN, DECEASED, JOSEPH O'NEILL, SAMUEL WILLIE, AND JAMES S. DOUGHERTY, *Defendants*.

In the District Court of the United States for the Eastern District of Missouri.
November Term, 1872.

Eastern District of Missouri, ss:

The plaintiff states that heretofore, to wit, on the 31st day of January, A. D. 1860, at the said Eastern District of Missouri, by their obligation in writing (herewith filed), sealed with their several seals, Daniel H. Donovan and the defendants, Joseph O'Neill, Samuel Willie, and James S. Dougherty, acknowledged themselves to be held and firmly bound unto the United States of America (the plaintiff) in the full and just sum of twenty thousand dollars, money of the United States, to which payment, well and truly to be made, they thereby bound themselves jointly and severally, their joint and several heirs, executors, and administrators; and the said obligation in writing was and is subject to the following condition, to the effect as follows: That, whereas, the President of the United States had, pursuant to law, appointed the said Daniel H. Donovan to the office of surveyor of the customs for the port of St. Louis, in the State of Missouri; now, therefore, if the said Daniel H. Donovan had truly and faithfully executed and discharged, and should continue truly and faithfully to execute and discharge, all the duties of the said office, according to law, then the above obligation to be void and of no effect; otherwise, it should abide and remain in full force and virtue.

The plaintiff states that, under and by virtue of said appointment, the said Daniel H. Donovan was and continued in the service of the plaintiff as surveyor of the customs for the port of St. Louis, in the State of Missouri, from said 31st day of January, A. D. 1860, until the 13th day of May, A. D. 1861, and assigning the breach of the condition of said obligation in writing, the plaintiff states that during said period of his service the said Daniel H. Donovan received for and on account of the plaintiff, by virtue of his said office, large sums of money, property of said plaintiff, and that although required by law, in the faithful discharge of the duties of his office, to account for and pay over said sums unto the plaintiff, he did not account for and pay over such sums, to wit, the sum of three thousand three hundred and fifty-six dollars and thirty-nine cents, or any part thereof, unto plaintiff, although often thereunto requested and directed.

The plaintiff states that said Daniel H. Donovan is now deceased; that the defendant, Frank J. Donovan, by the proper order and decree of the Probate Court of St. Louis county, in the State of Missouri, has been appointed and qualified as administrator of the estate of said Daniel H. Donovan, deceased; that said sum of three thousand three hundred and fifty-six dollars and thirty-nine cents now remains due and unpaid; that said indebtedness is shown by transcript of the books and proceedings of the Treasury Department of plaintiff filed, and that the defendants have refused and failed, and now refuse and fail, to pay said sum, or any part thereof, unto plaintiff.

Wherefore, plaintiff states that said obligation in writing has become forfeited; that an action has accrued unto plaintiff to demand and have of said defendants the said sum of three thousand three hundred and fifty-six dollars and thirty-nine cents, with interest thereon, at the rate of six per cent. per annum, from the 13th day of May, A. D. 1861, and for this sum, with said interest and costs of suit, the plaintiff asks judgment.

CHESTER H. KRUM,
United States Attorney, Eastern District of Missouri.

ANSWER.

Defendants, for answer to the petition of plaintiff, admit the execution of the bond set forth in said petition, and also that the said Daniel H. Donovan, deceased, was and continued in the service of the plaintiff as surveyor of customs for the port of St. Louis, in the State of Missouri, from said 31st day of January, A. D. 1860, until the 13th day of May, A. D. 1861. But defendants say, it is not true that said Daniel H. Donovan received for and on account of plaintiff the sum of $3,356.39, as averred, or that he was required, in the faithful discharge of the duties of his office, to account for and pay over said sum of money, or any part thereof. Defendants admit the death of said Daniel H. Donovan, and that Frank J. Donovan was appointed and qualified as administrator of his estate.

And for further answer, defendants say, that on the said 30th day of May, A. D. 1861, the said sum of $3,356.39 was due by the plaintiff to the said Daniel H. Donovan, for and on account of salary and fees, commissions, emoluments from all sources, storage and fees for storage coming to him as surveyor as aforesaid; that Daniel H. Donovan was and is entitled to a credit on the books of the Treasury Department at Washington for said sum of money; and that said claim for credit has, before the institution of this suit, by the said Daniel H. Donovan in his lifetime, and by his administrator aforesaid since his death, been presented to the accounting officers of the Treasury Department at Washington for their examination, and that the same has been disallowed. Defendants further say, that by virtue of the provisions of the acts of Congress—to wit: the act of March 2, 1799, 1 Statutes at Large, 708; act of May 7, 1822, 3 Ib. 695, as thereinafter modified; act of March 2, 1821, 4 Ib. 462; act of March 3, 1841, 5 Ib. 432; act of March 3, 1857, Ib. 229; and by the act of June

8, 1872, Session Acts of 1871–2, p. 336—the said Daniel H. Donovan was entitled to said sum of money on account of salary, fees, commissions, emoluments from all sources, storage, and fees for storage. Wherefore, defendants ask to be hence dismissed, with their costs.

SHARP & BROADHEAD,
Attorneys for Defendants.

AGREED STATEMENT.

It is admitted by the parties to the above-entitled cause, that defendants' intestate was surveyor of the port of St. Louis, doing duty as collector; and he, as such surveyor, performed such duties, as collector, as became necessary to be performed at that port, between the 31st day of January, 1860, and the 13th day of May, 1861. It is admitted that defendants' intestate retained for his compensation as such surveyor at the rate of six thousand dollars per year, two thousand of which was earned from rent and storage, and four thousand of which amount was earned from all other fees and emoluments. If the maximum compensation of his office was six thousand dollars, then the balance found against him by the Treasury Department, and herein claimed, is not due. If the maximum compensation of said officer be found by the Court to be less than six thousand dollars per year, then the balance due the government, if any, is to be adjusted on that basis. It is further admitted, that all surveyors doing duty as collectors at the port of St. Louis have, since the creation of said port, been charging and receiving three per cent. upon duties collected; and it is also admitted, that since the act of March 3, 1857, said officers have claimed the sum of six thousand dollars as the maximum of their compensation, from all sources under the law. [Signed,]

WM. PATRICK, *U. S. Attorney.*
JAMES D. BROADHEAD, *Attorney for Def'ts.*
ST. LOUIS, *December* 9, 1873.

The Treasury transcript was also filed with the petition, and appears in the printed record.

THE ISSUE.

The error complained of is that the Court below held the maximum compensation of the surveyor of the port of St. Louis, performing the duties of collector, to be five thousand dollars; while appellants claim that said maximum compensation is six thousand dollars per year, and refer to act of March 2, 1831, Heyl, 240; 4 U. S. Stat. 480; act of March 3, 1841, sec. 5, Heyl, 266; act of March 3, 1857, sec. 8, Heyl, 391; 11 U. S. Stat. 221; act of June 8, 1872, 17 U. S. Stat. 336; *Hall* v. *State*, 20 Ohio, 16; *S. B. Messenger* v. *Pressler*, 13 Ohio St. 255; *Western College* v. *Cleveland*, 12 Ohio St. 375; *Stone* v. *Elliot*, 11 Ohio St. 252; *Lorain Plank Road* v. *Cotten*, 12 Ohio St. 263; *Lehman* v. *McBride*, 15 Ohio St. 573; *U. S.* v. *Nurre*, 3 Story, 87; *U. S.* v. *Walker*, 22 How. —; *U. S.* v. *Hoyt*, 10 How. 135.

Robert Clarke & Co., Prs., 65 *West Fourth St., Cin., O.* [*November*, 1874.

Supreme Court of United States.

Donovan's Administrator,
Appellant,
vs.
The United States,
Appellee.

STATEMENT OF FACTS.

Defendant's intestate, Donovan, was surveyor of the port of St. Louis, "performing the duties of collector," up to May 13, 1861. In the settlement of his accounts with the government, he retained $6,000 per year as his official compensation, claiming that sum to be his legal allowance. This claim has been made by these officers ever since the act of March 3, 1857. It is disputed by the department. Stripped of all surplusage, the question in this case is: Are surveyors of ports, "performing the duties of collectors," under the act of 1831, entitled to the compensation of $6,000 per year?

The question was raised in the case of *The U. S.* v. *S. B. W. McLean*, in the United States Circuit Court, Southern District of Ohio, where Judge Leavitt held that the compensation allowed was $6,000 per year, as is claimed in the case at bar.

BRIEF.

The compensation in question is regulated solely by statutes, and its settlement depends upon a careful examination of those statutes. There is no decision of this Court upon the subject, though the case in 22 Howard is claimed to be. We shall show that it is not, but that, so far as it goes, it supports our view of this case.

In the early history of the custom-house laws the officers, such as collectors, naval officers, surveyors, etc., received their compensation from fees earned by them, which were provided for by the various statutes on the subject. As the business of the country increased, the aggregate of these fees came to be so large, that Congress saw fit to limit the compensation of these various officers, as derived from those fees. The first of these limitations, now in force, was that of the act of May 7, 1822, secs. 9 and 10. 3 U. S. Stat. 639; Heyl's Digest, 204. Section 9 provides that whenever the emoluments of any collector of customs of Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, or New Orleans, exceed $4,000; the emoluments of a naval officer exceed $3,000; the emoluments of a surveyor exceed $2,500 per year, the excess over those sums shall be paid into the treasury of the United States.

Section 10 provides that when the emoluments of a collector of any other port exceed $3,000; of a naval officer, $2,500; of a surveyor, $2,000 per year, the excess over those sums respectively shall be paid into the treasury of the United States.

As has been said, this law is a limitation upon existing rights. Without it, the officers named would have received compensation much larger than the sums named. This is apparent from the law itself, without going any further. It is only when the emoluments received are greater than the sums named that any excess is to be paid into the treasury.

It is this law which has given rise to the phrases "enumerated" ports and "non-enumerated" ports, of which much will hereafter be heard. The places named in section 9 are and always have been called "enumerated" ports, while all others are called "non-enumerated" ports. It is this distinction, erroneously applied, as we conceive it to have been, that has occasioned all the difficulty in this case.

It will be seen, that no distinction of this kind is in terms created in the statute itself; that is to say, the phrase "enumerated," or "non-enumerated," is not made use of as applicable to ports themselves, as though it was the intention of Congress to create such a classification, as that it should run through all time forever thereafter. The word "ports" is used in the 9th section. It is not used in the 10th section. The 10th section simply speaks of various classes of officers by name: Collectors, naval officers, and surveyors.

The limitation in section 10, as applied to collectors for instance, applies to such collectors as were performing the duties known to the law at that time, and to such other collectors and surveyors as subsequently performed those same duties. It certainly could not be meant to apply to a new class of officers, then unknown, who were afterward, created by law to do other things than collectors and surveyors then did, although they might be called by the name, collectors and surveyors.

This law was undoubtedly meant to cover all ports in existence at the date of its passage—May 7, 1822. At that date, there were the ports mentioned in the 9th section; there were also those, not mentioned, which were covered by section 10. But why should the law be construed to apply to ports not then in existence, but which were afterward created, with new duties, and new and distinct compensation?

Judge Ranney, in *Hall* v. *State*, 20 Ohio, 16, says: "A well-settled rule of construction here comes to our aid, which is, that 'a statute referring to, or affecting persons, places, or things, is limited in its operation to persons, places, or things as they existed at the time the statute was passed.'" Referring to *U. S.* v. *Paul*, 6 Peters, 141.

In the construction of statutes, it is a general rule "that all words, whether they be in deeds or statutes, or otherwise, if they be general, and not express and precise, shall be restrained unto the fitness of the matter or person." *Steamboat Messenger* v. *Pressler*, 13 Ohio St. 255–262; *Western College* v. *Cleveland*, 12 Ib. 375–380.

The words "all," "any," and "every," in a statute, are general, rather than universal terms, and are to be understood in one sense or another, according to the demand of sound reason. *Stone* v. *Elliott*, 11 Ohio St. 252–258; *Lorain Plank-road* v. *Cotten*, 12 Ib. 263–270.

They are words that may be understood in a limited sense. *Lehman* v. *McBride*, 15 Ohio St. 573–596.

It is claimed to be reasonable that this law should be confined, in its operation as to compensation, to the ports existing at the date of its passage. The enacting power knew what ports existed at that date. It knew what the duties performed by the then officers were; but the Congress of 1822 could not be supposed to know what might take place in the distant future. It was entirely possible that the affairs of the country might so change as that new ports would be required. The duties of these new ports might be more onerous than those of any mentioned in section 9. Would it, then, be fair to limit the collectors of such new ports to a compensation inferior to that of those who do less work?

If, then, our view of the effect and operation of the law of 1822 be the correct one, it goes far toward settling the merits of the case at bar.

The next law to which we draw attention, is that of March 2, 1831. Heyl, 240; 4 U. S. Stat. 480.

This is an act making St. Louis and other places, ports of delivery, which they were not before. By this law, when any merchant in St. Louis imports goods, he deposits with the surveyor a schedule of such goods, with an estimate of their cost. Upon this the surveyor makes an estimate of the amount of duties accruing, and the importer gives bond, approved by the surveyor, to pay these duties. The surveyor then sends to the collector at New Orleans, a copy of this bond and schedule.

The importer then enters the goods at New Orleans, and the collector then certifies, to the surveyor at St. Louis, the amount of duties, and delivers the goods to the importer to be shipped to St. Louis. Upon reaching their destination, the surveyor having informed himself of the correctness of the entire proceeding, gives a permit for the landing of the goods.

This brief statement of the law is only given to show, that by this act duties were imposed upon the surveyor of the port of St. Louis which had never been imposed before. Up to this time, it will be remembered, St. Louis was not a port at all. The surveyor of that place, if there was one appointed, discharged his duties, whatever they were, for which he received certain fees for each thing performed.

But by this act, St. Louis is constituted a port for the first time, and by the 5th section, surveyors are called upon to perform the duties above set forth; duties which appropriately belong to a collector's office, and not a surveyor's. Hence it is that these surveyors are known as surveyors "performing the duties of collectors."

It is certainly very evident that it would not be right, just, nor would it be law, for Congress to impose upon a man new duties, without paying him therefor. Government can not take a man's property, nor his personal services, without compensation. *U. S.* v. *Morse*, 3 Story, 87–91.

Therefore it is, that in section 5, act of 1831, Congress provides, that for these additional services, the surveyor so performing the duties of collector, shall have a salary of $350, in addition to his customary fees.

Let us now consider this law in connection with that of 1822. Suppose there had been a surveyor at St. Louis, appointed after 1822, and before 1831. Grant, even, that under the application of the law of 1822, his compensation had been limited to $2,000. Then, under the law of 1831, he would certainly be entitled to an increase of $350. Clearly it could not be claimed, that notwithstanding his additional services as collector, his pay was still limited to the $2,000. This would be exacting his personal services without compensation, and would therefore be unconstitutional. Therefore, if before 1831, he received $2,000, after 1831 he would be entitled to $2,350, *which shows that the limitation of* $2,000, *in the act of* 1822, *as to surveyors, does not apply to the surveyors of the act of* 1831, who performed the duties of collectors as well.

We have emphasized the foregoing sentence, because if the Court are convinced of this proposition, the decision below must be reversed.

In other words, our proposition is this: It was held below, that the act of 1822 applied to all ports of the present day. That under this act there were but two classes—"enumerated," and "non-enumerated" ports; and that the limitation of the 10th section applies, to-day, to all ports, other than those named in the 9th section. This is denied. It is claimed for plaintiff in error, that the law of 1822 applies to the two classes of ports of *that date*; that by the law of 1831, a third class is created. Under this law, the surveyors are called upon to perform new duties—namely, the duties of collectors. That new duties entitle to new compensation. That such new compensation is given in the shape of $350; and the act of 1822 does not limit that compensation to $2,000, even granting that it was so limited before 1831.

The next law to which we draw attention, is that of March 3, 1841. Prior to this law, collectors had rented warehouses, in which they stored goods as they were imported. They charged the importers storage. Soon, the storage charged, far exceeded the rent paid for warehouses, and the collectors pocketed large sums of money in the transaction. To prevent this abuse, the law of 1841 undertook to say that collectors should get no more than $2,000 profit out of the warehouse business. Accordingly, the 5th section provides that the collector shall keep an account of the rent and storage paid him on goods so stored, over and above the amount paid him for rent of warehouses. If this amount exceeds $2,000 a year, the collector shall pay such excess into the treasury of the United States.

This act is also an act of limitation. It limits the amount which collectors may have from rent and storage to $2,000. It further limits the maximum compensation of those collectors to $6,000. As this Court has said, in *U. S.* v. *Walker*, 22 How.:

"It is insisted in one of the printed arguments filed in this case, that the act now under consideration has the effect to repeal the maximum provided in the prior act, and that every collector under this act is entitled to $6,000 as an annual compensation, provided the office yields that sum from all the sources of emolument, including rent and storage.

"Collectors of the enumerated ports undoubtedly may receive $4,000 from the sources of emolument recognized in the act of May 7, 1822, and they may also receive $2,000 from rent and storage.

"Those two sums are equal to the *new maximum rate created by the act under consideration* (1841), which provides that no collector, under any pretense whatever, shall receive hold, or retain more than $6,000 per year, including all commissions for duties, and all fees for storage, or fees, or emoluments, or any other commissions or salaries, which are now allowed and directed by law.

"But it is quite clear that there is nothing in the act (1841) having the slightest tendency to show that the prior act is repealed, *so far as it is applicable to the collectors of non-enumerated ports.*

"*No new maximum* is fixed to their compensation, and there is not a word in the *new provision* inconsistent with the tenth section of the prior act.

"To suppose that the *new maximum* applies to the collectors of the non-enumerated ports would be to impute an absurdity to the act, for the reason that under no possible state of things can such collectors lawfully retain, hold, or receive more than $5,000 as their annual salary or compensation from all the sources of emolument recognized and prescribed by the two acts. It may be $5,000, or it may be much less than $3,000, according to the state of the importations and the amount received from rent and storage."

Thus the Supreme Court distinctly declares, that the act of 1841 *created a new maximum compensation* of $6,000; and, also, that it would be absurd to apply the *new maximum* thus created to *collectors of non-enumerated ports*. And yet it is insisted that these surveyors (who are entitled to whatever compensation the act of 1841 allows to collectors), are only entitled to the compensation of collectors of non-enumerated ports, viz: $5,000.

The act of March 3, 1857 (Heyl, 391; 11 U. S. Stat. 221), provides, in section 8, that the provisions of the 5th section of the act of 1841 "shall apply to surveyors performing, or having performed, the duties of collectors of the customs, who shall be entitled to the same compensation as is allowed to collectors for like services in the settlement of their accounts."

It was supposed by the surveyor at St. Louis that, under this act, he, "having performed the duties of collector," was entitled to $6,000 per year, the new maximum allowed collectors under the act of 1841. That such was the understanding of those who passed the bill, is shown by the letters of Senator Green and Hon. John A. Bingham, hereto attached.

As before stated, the law of 1857 only referred to this particular class of surveyors, a class, as we have seen, who perform more duties than any other, and who should be paid accordingly. The law first says that the provisions of the 5th section of the act of 1841 shall apply to these surveyors. Had the law said nothing more, what would have been the result? It would certainly indicate that if there were any advantage in the way of compensation in the act of 1841, these surveyors should be entitled to it. But it is further said, not only that the law of 1841 should be construed to apply to them, but that they shall be entitled to the same compensation as is allowed to collectors for like services. Now, whatever collectors get, these surveyors must get, because they do "like services." They "perform the duties of collectors." Whatever collectors do, they do. Going back now to the law of 1841, we find a maximum of $6,000 fixed for collectors. They shall not retain "more than $6,000 per year." That certainly means they may retain $6,000, if their fees, etc., amount to that sum. It must still be remembered that the law of 1841 is itself a limitation. Previous laws had said that collectors should be compensated in fees for this, that, and the other. These fees grew to large sums, to all of which the collector was entitled, until a limitation was fixed beyond which he could not go. Then came the law of limitation fixing that limit at $6,000. Certainly that collector is entitled to $6,000. For instance, the surveyor of St. Louis, acting as collector, gets fees amounting to $10,000 or $15,000. They are prescribed by law, and the law says he shall have them. Now comes the law of '41 and says he shall have no "more than $6,000." Certainly he is entitled to that.

But as the law of 1857 was not thus construed by the department, the law of 1872 was passed. 17 U. S. Stat. 336. Now, what was the mischief that this law was intended to remedy? The agreed statement of facts shows "that since the act of March 3, 1857, said officers (surveyors performing the duties of collectors) have claimed the sum of $6,000 as the maximum of their compensation from all sources, under the law. This claim has always been refused by the department, and this suit is to establish it. It was this refusal of the department to allow the $6,000, under the law of 1857, that was sought to be remedied by the act of 1872.

This act purports to amend the act of 1841, and to apply it to "surveyors performing the duties of collectors." Suppose we make the necessary amendment in point of fact. The act of 1841 then reads thus:

"And no such collector, or surveyor performing the duties of collector, shall, on any pretense whatever, hereafter receive, hold, or retain for himself, in the aggregate, more than $6,000 per year."

Does that not mean that he may retain $6,000? Remembering that the fees, etc., of the surveyor, to which he was previously entitled by law, were much more than $6,000, is he not now entitled to that sum?

It will be observed that in fixing the compensation of surveyors performing the duties of collectors, no reference is had in the law to the compensation of other surveyors; but by the law of 1872, they are to have the compensation of *collectors*, as fixed or limited by the 5th section of the law of 1841. The only compensation there fixed for collectors is $6,000, and so the Supreme Court has decided in the Walker case, 22 Howard. The maximum compensation of any other surveyor is $4,500, and it is conceded by the department, and decided by Judges Treat and Dillon, in the District and Circuit Courts, in the case at bar, that surveyors performing the duties of collectors are to have at least $5,000, which is $500 more than the surveyor of an enumerated port receives. This much being conceded, we think the conclusion inevitably follows that the compensation is $6,000 and not $5,000.

But again. Clearly, the law of 1872 was enacted for some purpose or other. Congress has been charged with various things in the matter of legislation, but it has not yet been judicially ascertained that laws solemnly enacted mean absolutely nothing. Unless the law of 1872 does give the surveyors "performing the duties of collectors" $6,000 per year, it does mean absolutely nothing. We have seen that the claim persistently made by them, subsequent to the act of 1857, was for $6,000. This claim has been as persistently rejected. But what further do we see? Certainly the law of 1872 intended to give them some advantage of some kind or other, which they did not have before. Surely this concession will be readily made. It will be as readily conceded that this advantage was to be in the matter of compensation, for the act of 1872 relates to nothing other than compensation. What, then, is the advantage? Under the ruling of the Court below it is—nothing. That Court held, that applying the law of 1857 to that of 1841, surveyors "performing the duties of collectors" were entitled to $5,000. Judge Treat says, in his opinion: "In the light of previous adjudications (he had already referred to the Walker case and 5 Wall. 647, as settling the question) upon the act of 1841, the act of 1857 must be construed to give to surveyors performing the duties of collectors the same compensation as was allowed to collectors of their respective classes—that is, if the surveyors performing collectors' duties were in the enumerated ports, $6,000 *maximum;* if in the non-enumerated ports, $5,000," holding St. Louis to be a non-enumerated port.

By this it will be seen that in his view, under the law of 1857 and prior to 1872, the surveyor of St. Louis was entitled to $5,000. Yet, under the law of 1872, he is entitled to no more, making that law mean, as we have said, nothing.

The same was held in the case of *George McLean* v. *The United States*, in the Court of Claims. This was a suit by McLean for compensation, services rendered up to April, 1869. Of course the law of 1872 had no application, not having then been passed. The Court find, "as conclusions of law"—

2. "That as depositary of public moneys, he was entitled to be paid annually, under the act of March 2, 1853, c. 87, as commissioner, at the rates specified in the act, on the public moneys received by him, such sum, not exceeding $1,500, as would, when added to his emoluments as surveyor, make an amount not exceeding $5,000."

And again:

"And thus, under the acts of 1841 and 1857, the maximum compensation receivable by surveyors of non-enumerated ports, performing the duties of collectors, was $5,000—viz., $2,000 if received from rent and storage, and $3,000 as such surveyors."

It is thus seen that the claim to $6,000 had been made under the law of 1857, and rejected by the department. It was also rejected by the Court of Claims before the law of 1872, and that before that law the sum to be allowed was $5,000. Then the question is: Does not that law of 1872 increase this compensation from $5,000 to something more?

We have arrived, then, at this point. The construction of the department was: The holding of such courts as had decided the question was, that the application of the law of 1857 to the law of 1841 was that the surveyors "performing the duties of collectors" were entitled to $5,000, and no more.

Then comes the law of 1872. We say it was intended to increase that compensation from its existing point of $5,000 to something higher. What does it say? The law of 1841 "shall be amended." Why "amended?" It does not accomplish its object now. The result it arrives at, under the application of the law of 1857, is not satisfactory. That result is $5,000. This not being satisfactory, the law must be changed and "amended." Can anything be clearer than that, if $5,000 was satisfactory to Congress, no change of existing laws, under the construction given, was needed?

Under such construction, it was just as though the law of 1841 read, in so many words, "surveyors performing the duties of collectors shall only have $5,000." Suppose it had so read, in point of fact, could anything be clearer than that the intention was that that compensation should be changed from $5,000 to some other sum higher or lower than $5,000? If the change was to be for the advantage of the surveyor—it is not claimed that it was intended to cut down the compensation—the $5,000 must necessarily be increased.

Then, bearing in mind that the surveyors were already receiving $5,000, and that the law of 1872 was evidently to be to their advantage in this matter of compensation, we have these further words, not in the law of 1857, they are to have the same compensation as is allowed to collectors "by said act of March 3, 1841." Prior to the law of 1841, was any collector in the United States "allowed" $6,000? Not one! By the law of 1841, what is "allowed" the collectors spoken of therein "by said act?" $6,000. Prior to this act (1872) these surveyors were receiving $5,000. This act was intended to increase that amount. If increased at all, where does the increase stop? At the "allowance" named in the act of 1841, to wit, $6,000.

This view appears to fortify our statement, which insists on the three classes of surveyors. By limiting this classification to that of "enumerated" and "non-enumerated" ports, the conclusion had been arrived at that "surveyors performing the duties of collectors" were entitled to $5,000, *because* they were surveyors of "non-enumerated" ports. By varying this compensation, the indication would seem to be that they were no longer to be classed as surveyors of "non-enumerated" ports, but were to have a different sum, by virtue of the fact that they were no longer to be considered as of that class, but as a third by themselves.

If additional suggestion were needed, the proviso to the act would seem to furnish it. "Provided, that the fees, commissions, and emoluments prescribed by law, and collected by them, shall amount to such maximum allowance."

What is the use of this proviso at all, if the surveyors were not to have the amount specified in it? Suppose it had read thus: "Provided, that the fees, etc., shall amount to $6,000." With this reading, the law would be about thus: "You are now getting $5,000. You may have the same that collectors get, whose maximum is $6,000, provided you earn that $6,000."

It seems to us, therefore, from the foregoing, that the compensation to be allowed is $6,000, as claimed.

The above proviso also shows this important fact: Whereas, prior to the law of 1872, before these surveyors could have their $6,000, $2,000 must be earned from "rent and storage." This is done away by the proviso. It is no longer necessary to earn any part of the compensation from rent and storage. The surveyor is entitled to $6,000, if he earns it from "fees, commissions, and emoluments," as the proviso says.

This view is sustained by the revised statutes:

"SEC. 2688. No collector, or *surveyor performing the duties of collector*, shall, on any pretense whatsoever, receive, hold, or retain for himself, in the aggregate, more than six thousand dollars per year, including all commissions for duties, and all fees for storage, or fees or emoluments, or any other commissions or salaries which are now allowed and limited by law." U. S. Revised Statutes, p. 307.

Although the impression seems to have pervaded the minds of the judges below, that, upon the question of compensation, there were but two classes of officers—those belonging to enumerated and those to non-enumerated ports—yet abundant legislation by Congress shows this impression to be incorrect. Repeated laws have given to different officers, collectors and surveyors, salaries, in addition to that which they would have received if this classification alone existed. Compensation by special act is given as follows: May 26, 1824, to collector of Nantucket, $250 per annum, Heyl, p. 220; June 30, 1830, Natchez, Miss., collector, $500 per annum, Heyl, p. 250; June 30, 1834, Newark, N. J., collector, $250 per annum and fees, Heyl, p. 251; July 7, 1838 (secs. 9 and 10), Vicksburg collector, $500 per annum, Heyl, p. 258; December 31, 1845, Galveston collector, fees, etc., not to exceed $2,000, Heyl, p. 290; 1848, Astoria collector, $1,000 and fees, Heyl, p. 318; June 2, 1862 (sec. 2), San Francisco collector, $6,000, Heyl, p. 417; besides many others.

There is nothing in the Walker case, rightly understood, that militates against our position, though, upon this authority, the case below has thus far been decided against us.

Walker was collector of the port of Mobile, which was a port long prior to 1822. He claimed $6,000, under the law of 1841, and his claim was disallowed, as it should have been, because, by the law of 1822, his compensation was limited to $3,000, allowed a collector of a non-enumerated port, and, by the act of 1841, he had $2,000 from rent and storage. Walker made no claim under the act of 1831, as we do. No questions arising on that act could arise, nor were any considered by the Court. The act of 1831 is not mentioned nor alluded to in the case from beginning to end. How could any rights under that act be determined? Courts decide upon what is before them, not upon what is not.

In our judgment, we are sustained by the Walker case in the views we entertain. If we have made ourselves understood, there are at least three classes of collectors. Two under the law of 1822, of "enumerated" and "non-enumerated" ports. The third, under the law of 1831, surveyors who "perform the duties of collectors." The compensation of all these officers at first were without limitation—that is to say, they received fees for measuring steamboats and other things, and as these various services were multiplied, their fees increased. But they were entitled to all the fees they received. This is shown by the cases. In Walker's case, 22 Howard, on page 308, the Court say:

"Compensation to collectors, from the organization of the government to the present time, has been derived chiefly from certain enumerated fees, commissions, and allowances, to which has been added a prescribed sum, called salary, and which is much less than the compensation to which the officer is entitled. Provision for such fees, commissions, and allowances was first made by the act of the 31st of July, 1789, which also allowed to collectors certain proportions of fines, penalties, and forfeitures." 1 Stat. 64.

"More permanent provision, however, was made by the act of the 18th of February, 1793; by the act to regulate the collection of duties on imports and tonnage, passed on the 2d of March, 1799, and by the compensation act, passed on the same day." 1 Stat. 316, 627, 786.

"By these several acts, certain enumerated fees and commissions are made payable to collectors. They are also entitled to certain proportions of fines, penalties, and forfeitures. Accurate accounts were kept by them of all fees and official emoluments by them received, and of all the expenses for rent, fuel, stationery, and clerk hire, which they were required annually to transmit to the comptroller of the treasury; but they were allowed to retain to their own use the whole amount of emolument derived from that source, without any limitation. Maximum rate of compensation was first prescribed by the act of 13th of April, 1802. That limitation was $5,000, and it was applicable to all collectors."

So, also, in the case of *Hoyt* v. *United States*, 10 How., the Court say, p. 135:

"At the date of the act of 1802, the compensation of the collector was derived from three sources: 1. Fees allowed for the services already referred to; 2. Commissions on the duties received; and 3. A share of the fines, penalties, and forfeitures. The emoluments of the office were dependent upon the receipts from these sources; and the officer was entitled to apply to his own use the whole amount derived from them."

It is therefore apparent, that under the legislation of Congress, collectors, surveyors, etc., were at first entitled to all the fees they received, and would be to-day, were it not for the limitations subsequently imposed.

The act of 1822 imposed a limitation upon the compensation to certain officers—namely, of enumerated and non-enumerated ports.

Now, what is the limitation imposed upon the compensation to surveyors, under the act of 1831? They are entitled to receive, "in addition to his customary fees," $350. There is no limit here, preventing him taking all of these "customary fees." The limitation in the act of 1822 does not apply, because the surveyors of the act of 1831 are neither of enumerated nor non-enumerated ports. They are, *sui generis*, a class by themselves. There is, therefore, no limitation upon the amount of fees that these surveyors may receive and keep. The limitation in the act of 1841 does not apply to them, until the act of 1857 makes it apply. For the first time, then, in the year 1857, a limitation is imposed, by bringing them within the act of 1841; and the act of 1872 puts the construction of the law beyond all doubt. The limitation, then, and the sole limitation, is of this latter act. What is it?

These surveyors are to have the same compensation as "collectors" have, by the act of 1841. That is to say, whereas their fees amount to much larger sums, they shall not retain the whole, but shall be cut down to the same rate as collectors, by the act of 1841. The only limitation to collectors in the act of 1841 is $6,000. Therefore, we claim that is the only limitation to be applied to surveyors, under the act of 1831, who perform the duties of collector, and their compensation rightfully is $6,000.

As we have said, this conclusion is only avoided by construing the act of 1841 in connection with the act of 1822, and making the latter apply to other ports than those provided for in the act itself. We claim that the act of 1822 can not be so applied. It can not be applied to the surveyors we represent; and if we maintain this, they are entitled to their $6,000.

We claim this result entirely independent of the question of rent and storage; for we insist that the surveyor of St. Louis is entitled to this sum, whether he earns rent and storage, or not.

D. THEW WRIGHT,
NOYES & LLOYD.
Attorneys for Appellant.

LETTER OF SENATOR GREEN, OF MISSOURI.

[*Copy.*]

At the request of W. W. Green, Esq., surveyor and acting collector of customs at St. Louis, from September, 1849, to August, 1853, I state that I was a member of the Senate of the United States from Missouri in the year 1857, when section 8 of the act entitled "an act making appropriations for certain civil expenses of the government, for the year ending June 30, A. D. 1858," was passed. Said section 8 is found on p. 229, v. 11 U. S. Stat. at Large, and section 5 of the act of March 3, 1841 (which it amends), is found on p. 433 of vol. 5 of the U. S. Stat. at Large.

The intention of the said section was well understood by the members of the Senate, with whom said Green and Mr. Wm. A. Lynn, his successor in office of surveyor, etc., had general personal communication, with the view to its preparation and passage in February and March, 1857, and as the result of which, said amendment was adopted, without an objection from a single member of the Senate. It was concurred in by the House of Representatives, and approved by the President.

After the adjournment of Congress, in March, 1857, Hon. Howell Cobb, who became Secretary of the Treasury on and after March 4, 1857, not being aware of the object with which the section was adopted, declined to give it its proper interpretation and application. Some eight or ten days after said adjournment, nine or more members of Congress, who had remained at Washington City, being advised that Secretary Cobb had declined acting in the collection of the accounts of said Lynn and Green, under the provisions of said section 8 aforesaid, thereupon united in signing a certificate, stating it as within their knowledge, that the intention of Congress was, by the said section, to increase the compensation of surveyors performing, or having performed, the duties of collectors of the customs at the port of St. Louis, allowing to them a maximum compensation not exceeding $6,000 per annum, as provided by section 5 of the act of 1841, touching the compensation of collectors, and that the true intent and meaning of said section was to increase the compensation of the surveyor, etc., at the port of St. Louis, and any other port to which it might apply, to the maximum of $6,000 per annum, if earned in the methods provided by law. The object was to pay to the surveyors of ports, who gave bond and performed the duties of collectors, the same rate of compensation as provided by law for collectors. This was distinctly understood, and is fully sustained by the language of the law.

[Signed,] JAMES S. GREEN.

LETTER OF THE HON. JOHN A. BINGHAM, SEPTEMBER 18, 1872.

[*Copy.*]

As to Intent of Act of 1872.

In reply to your inquiry touching the intent and effect of the act of June 8, 1872, amending section 5 of the act of 1841, I do not hesitate to say, that the intent and effect of the amendatory act is to provide the same compensation for *all* surveyors of customs ports, performing or having performed the duties of collectors of customs, as allowed to collectors for like services—to wit, $6,000—provided the fees, etc., prescribed by law, shall amount to such maximum allowance.

It is my recollection, that at the time this amendatory act of June last was under consideration in the Judiciary Committee of the House, it was understood that the act of March 3, 1857, section 8, extending the provision of section 5 of the act of 1841, had been construed by the department to apply only to the surveyors of ports named in section 10 of the act of 1822. To exclude this conclusion, and extend the provisions of section 5 of the act of 1841 to *all* customs ports, the act of 1872 expressly declares that section 5 of said act of 1841 *shall be amended*, and *shall be construed* to apply to ALL surveyors of customs ports, performing, or having performed, the duties of collectors of customs, "and that they shall be entitled to receive the *same compensation* as is allowed to collectors by said act of March 3, 1841, for like services," etc. Said act of March 3, 1841, provides (section 5) that a collector of customs shall receive, hold, and retain for himself $6,000 per year from the commissions for duties, etc., and no more.

That is the collector's compensation, as provided by section 5 of said act of 1841, and as already stated, the act of 1872 expressly declares that section 5 of said act of 1841 *shall be construed* to apply to ALL surveyors of customs ports performing, or having performed, the duties of collectors of customs, and that *they* shall be entitled to the *same compensation* as is allowed to collectors by said act of March 3, 1841, provided the fees, etc., amount to that sum.

When language is so plain, there is an end of all construction—it is to be followed.

Allow me to add, that, in my opinion, no effect whatever can be given to the act of June 8, 1872, other than as above stated. Nor can any other intent be assigned, or even imagined, for its enactment.

Very truly yours,

[Signed,] JOHN A. BINGHAM.

ACT OF MAY 7, 1822, SECS. 9 AND 10.

SEC. 9. That whenever the *emoluments* of any collector of customs of either of the ports of Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, or New Orleans, shall exceed four thousand dollars, or the *emoluments* of any naval officer of either of said ports shall exceed three thousand dollars, or the *emoluments* of any surveyor of either of said ports shall exceed two thousand five hundred dollars in any one year, after deducting the necessary expenses incident to his office in the same year, the excess shall in every such case be paid into the treasury for the use of the United States.

SEC. 10. That whenever the *emoluments* of any other collectors of the customs shall exceed three thousand dollars, or the *emoluments* of any other naval officer shall exceed two thousand five hundred dollars, or the *emoluments* of any other surveyor shall exceed two thousand dollars in any one year, after deducting therefrom the necessary expenses incident to his office in the same year, the excess shall in every such case be paid into the treasury for the use of the United States.—*U. S. Statutes, vol.* 3, *p.* 693.

ACT OF MARCH 2, 1831, SEC. 5.

An act allowing the duties on foreign merchandise imported into Pittsburg, Wheeling, Cincinnati, Louisville, St. Louis, Nashville, and Natchez, to be secured and paid at those places:

SEC. 5. That where surveyors are not already appointed in any of the places mentioned in the first section of this act, a suitable person shall be appointed for such places, and on all such surveyors, whether appointed or to be appointed, shall devolve the duties *prescribed by this act, in addition to the customary duties performed by that officer in other places;* and the surveyor at each of said places shall, before taking the oath of office, give security to the United States for the faithful performance of all his duties in the sum of ten thousand dollars, and shall receive, *in addition to his customary fees*, an annual salary *of three hundred and fifty dollars.—U. S. Statutes, vol.* 4, *p.* 480.

ACT OF MARCH 3, 1841, SEC. 5.

Sec. 5. That in addition to the account now required to be rendered by every collector of customs, naval officer and surveyor of ports, every such collector, naval officer, and surveyor shall, each and every year hereafter, render a quarter-yearly account under oath to the Secretary of the Treasury, in such form as such Secretary shall prescribe, of all sums of money by each of them respectively received or collected for fines, penalties, or forfeitures, or for seizure of goods, wares, or merchandise, or upon compromise made upon said seizure; or on account of suits instituted for frauds against the revenue laws; or for rent and storage of goods, wares, or merchandise, which may be stored in the public store-houses, and for which rent is paid beyond the rents paid by the collector or other such officer; and if from such accounting it shall appear that the money received in any one year by any collector, naval officer, or surveyor, on account and for rents and storage aforesaid, and for fees and emoluments, *shall in the aggregate exceed the sum of two thousand dollars, such excess* shall be paid by the said collector, naval officer, or surveyor, as the case may be, into the treasury of the United States, as part and parcel of the public money; and no such collector shall, on any pretense whatever, hereafter receive, hold or retain for himself, in the aggregate, more than *six thousand dollars per year*, including all commissions for duties, and all fees for storage, or fees or emoluments, or any other commissions or salaries which are now allowed and limited by law. Nor shall such naval officer on any pretense whatever, in the aggregate, receive, hold, or retain for himself, hereafter, more than five thousand dollars per year, including all commissions on duties, and all fees for storage, or fees or emoluments, or any other commissions or salaries which are now allowed and limited by law. Nor shall such surveyor, in the aggregate, receive, hold, or retain for himself, hereafter, more than four thousand five hundred dollars per year, including all commissions, or fees, or emoluments, or any other commissions or salaries which are now allowed and limited by law. *Provided: The aggregate sums allowed per year to the several officers aforesaid shall be exclusive of the necessary expenses incident to their respective offices, in the same year*, subject to the regulations of the Secretary of the Treasury.—*U. S. Statutes, vol.* 5, *p.* 421.

ACT OF MARCH 3, 1857, SEC. 8.

SEC. 8. That the provisions of the fifth section of the act entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year eighteen hundred and forty-one," approved the third day of March, eighteen hundred and forty-one, which established and limited the compensation of collectors of customs, shall be construed to apply to *surveyors performing or having performed the duties of collectors* of the customs, who shall be entitled to the same compensation as is allowed to collectors for like services in the settlement of their accounts.—*U. S. Statutes, vol.* 11, *p.* 221.

ACT OF JUNE 8, 1872.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the fifth section of the act entitled "An act making appropriation for the civil and diplomatic expenses of the Government for the year 1841," approved March 3, 1841, which established and limited the compensation of collectors of customs, *shall be amended and* shall be construed to apply to *all* surveyors *of customs ports performing* or *having performed the duties of collectors of customs*, who shall be entitled to receive *the same compensation as is allowed to collectors by said act of March* 3, 1841, for like services in the settlement of their accounts with the treasury: *Provided, that the fees, commissions, and emoluments, prescribed by law, and collected by them, shall amount to such maximum allowance.—U. S. Statutes, vol.* 17, *p.* 336.

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Jan 25th 1875

In the Supreme Court of the United States.

October Term, 1874.

Frank J. Donovan, *Administrator, &c.,*
vs.
The United States.
No. 479.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE DEFENDANTS IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

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THE UNITED STATES.
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In Error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR THE DEFENDANTS IN ERROR.

The record presents the following general outline:

In the customs department there are, amongst others, the following officials, viz., Collectors, Surveyors, Naval officers, and, also, at some ports, *Surveyors doing collectors' duty.* For *salary-purposes* the three first are divided into two classes—(1) those doing duty at New York, Philadelphia, and other named ports, who receive a higher salary; (2) all *others*, who receive a less salary.

The question is, Are surveyors *doing collectors' duty* to be paid with reference to such *classes*, or are *all* such to receive the highest grade of pay?

The United States assert that the system of classes extends to them also. This is denied by the plaintiff in error, who claims for all *surveyors doing collectors' duty* the highest grade of pay.

The issue presented turns upon a question of statutory construction. If such construction be dubious, we submit that the balance will incline in accordance with the plain policy which rules the cases of other officials of the same sort.

The case turns mainly upon the meaning of the 5th section of the act of 1841, quoted in the brief of the plaintiff, p. 22.

This act refers to and confirms the allowances to collectors, naval officers, and surveyors in the act of 1822, §§ 9 and 10, (plaintiff's brief, p. 21,) and therefore, by the maxim *verba relata inesse videntur*, is to be read as if containing those sections; its main purpose being to amend the 11th section of such former act, which allowed to collectors, &c., *the whole* of what they might receive as fees upon *fines*, *forfeitures*, *&c.* (Stat. 3, 695.)

It therefore, by *confirmation* and by *original enactment* together, provides for *two* classes of collectors, &c.—the *one* being entitled to salaries of $4,000, out of fees upon *duties*, *&c.*, in addition to $2,000, out of fees upon *fines*, *&c.*; the other being entitled to salaries of $3,000, out of *duties*, *&c.*, in addition to $2,000, out of *fines*. After effecting this, it proceeds to enact, *by way of excluding any other official receipt*, that under no pretence shall collectors, &c., receive more than $6,000, &c.

It seems plain that this last clause is only a summary, as it were, of the effect of the former words of the section as to the *first* class of collectors, &c., and cannot be construed as meaning that *all* collectors, &c., should have salaries of $6,000, &c. It leaves the *second* class to the operation of the greater restrictions of preceding provisions. The act of 1841 is a *restraining*, not an *enlarging*, statute, and is to be construed accordingly.

If the statute of 1841 recognizes, and in effect provides for, *two* classes of collectors, then the acts of 1857 and of 1872, which refer *surveyors doing collectors duty* to the compensation provided in that statute for "collectors," recognizes and provides for similar (*i. e.*, *two*) classes of such surveyors, and, *reddendo singula singulis*, refers such of these as may act at *New York*, *&c.*, to the $6,000 aggregate, those at *other* ports to that of $5,000.

We are not concerned to explain why the act of 1872 was passed when that of 1857 was already upon the statute book. If the construction placed by the plaintiff upon the act of 1841 be correct, then the act of 1857 secures the claim made by him in the present action as completely as does that of 1872. If our construction of the act of 1841 be correct, the act of 1872 does not countervail its effect more than that of 1857. Both acts refer themselves for explanation to the act of 1841.

Judging by the language of the act of 1872, its draughtsman may have thought that the previous act was *unconstitutional*, as affecting to *construe* a previous act in regard to *previous* cases, and therefore he may have introduced the words "shall be amended."

Our construction of the acts in *pari materia* as to this subject, is recommended as leading to a result corresponding to that policy of Congress which has drawn a line between certain collectors, &c., and others. If there be such a policy, why should not a construction maintaining it as to *surveyors doing collectors' duty* be preferred to one which disregards it?

Again, if it were the purpose of Congress to give to officers like Donovan $6,000 per annum out of such fees as they might receive, it would have been more natural, and simpler to express that design in other and fewer words than were adopted in the act of 1872.

Obscure expressions in acts intended by their promoters to give a larger compensation for services, which *at such time are ended*, than previous provisions had allowed, will not receive a construction to forward that design. For as regards such services *the promoters* are upon one side of the counter and the *interests of the public* are upon the other. The inclination is always *contra proferentem, i. e.*, as applied here, against special legislation.

The construction placed by the plaintiff upon the act of 1872 abolishes all distinction *between collectors*, as well as between surveyors doing collectors' duty. Both classes of officers, or neither, are, by the act of 1872, to have $6,000 *in all cases*. More than this, both officers, or neither, are to receive $6,000 in case any department of their fee-producing services amounts to so much; whereas the act of 1841 seems plainly to recognize that, in order to make up such $6,000, one branch of such services must produce at least $4,000, another at least $2,000.

Opinions of Attorney General, 4, 261.

The $350 salary is included in the maximum, whatever that is. After the act of 1831 such surveyors were not entitled to receive beyond the maximum of 1822. In that maximum, as applied to other officers, *salaries*, if any, were included.

Att'y General Legare's opinion, 3 Op., 658.

It can make no difference that such salary was given by a subsequent statute. Such salary was given to eke out *small* receipts, not to disturb the pronounced policy of Congress as to the amount beyond which no salary ought to extend. There is no *constitutional* question involved, as suggested by the plaintiff. *The officeholder can resign!* Whether he shall for additional labor have additional pay, is a dry question of policy.

The act of 1822 applies to ports afterwards established as well as to those then existing. This is a rule of statutory construction almost universal. Just as statutes affecting "men" operate as well upon those born after as upon those then living; as those affecting "crimes" apply to crimes afterwards created; as a statute referring *non-enumerated* articles, for the *duty* payable upon them, to a *duty* laid upon like "*enumerated*" articles, applies as well to enumerations in later statutes; as a statute inflicting penalties in respect of articles "prohibited," applies as well to articles prohibited by later statutes; so here, when the act of 1822 speaks of "other collectors," &c., it means all other, whether then existing or afterwards to be created. [The claim of and allowance to the plaintiff, at St. Louis, of *three per cent. upon duties collected*, Record, p. 17, goes upon this very construction. Act of March 2, 1799, 1 Stat., 708, top line.]

Att'y Gen'l *vs.* Saggers, 1 Price, 189.
Stuart *vs.* Maxwell, 16 How., 150.
U. S. *vs.* Holliday, 3 Wall., 407.

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